

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

DALE FOSTER, DARLA SOLOMON and DAVID LEITHREN, individually and on behalf of all others similarly situated, Plaintiffs, v. LOWER, LLC, Defendant.	Case No. 1:22-cv-1581-GLR
EDGAR WOLFF, individually and on behalf of all others similarly situated, Plaintiffs, v. LOWER, LLC, Defendant.	Case No. 1:22-cv-02003-JKB

JOINT MOTION FOR *CY PRES* DISTRIBUTION

Plaintiffs Dale Foster, Darla Solomon, David Leithren, and Edgar Wolff, and Defendant Lower, LLC, by and through the undersigned counsel, submits this Unopposed Motion for *Cy Pres* Distribution to approve the distribution of \$79,465.48 in unclaimed funds stemming from the Class Settlement in this matter to Maryland Legal Aid as a *cy pres* recipient.

On December 1, 2023, the Court granted final approval of the Parties' class settlement of this matter. The Settlement provides that any monies which remain in the Settlement Fund after all valid claims have been distributed and the time for cashing checks has passed, "will be

distributed *cy pres* to a recipient to be proposed by the parties and approved by the Court.” Doc. 41-2, Settlement Agreement, ¶¶ 47, 66. Here, \$79,465.48 remains in the Settlement Fund after notice and administrative costs, attorneys’ fees and costs, service awards, and Settlement benefits have been distributed. Declaration of Sara Rugg of Angeion Group, LLC Regarding Cy Pres Distribution, ¶3. Class Counsel thus asks that, as provided by the Settlement, the Court grant their unopposed motion for distribution of this \$79,465.48 to Maryland Legal Aid.

“The purpose of the equitable *cy pres* remedy is to benefit members of a class and the public, indirectly, when provision of a direct benefit is impossible or difficult to attain. When the proceeds of a damage award, settlement fund, or penalty cannot be returned directly to individual class members, it is appropriate for the court to distribute the funds to interested third-parties who will advance and promote the interests of the class.” *McDaniels v. Westlake Servs., LLC*, Civil Action No. ELH-11-1837, 2014 U.S. Dist. LEXIS 16081, at *29-30 (D. Md. Feb. 7, 2014). Maryland federal courts frequently utilize *cy pres* distributions where class members are difficult to identify or where they change constantly, or when there are unclaimed funds in class settlements. *Id.* at *31 (citing *In re Microsoft Corp. Antitrust Litigation*, 185 F. Supp. 2d 519, 523 (D. Md. 2002)). When doing so, courts are guided by the parties’ original purpose and direct the unclaimed funds to be distributed for the indirect prospective benefit of the class. *Id.* at *30-32 (Approving distribution of the class settlement’s residual funds to a Legal Aid as the *cy pres* recipient).

Here, all valid claims have been paid pursuant to the Settlement Agreement, including a second round of *pro rata* distributions pursuant to Paragraph 47 of the Settlement Agreement. Doc. 41-2. As a result, damages claims have been satisfied and the remaining amount of unclaimed funds makes *cy pres* payment of the remainder of the Settlement Fund appropriate.

In this case, the lawsuit sought to compensate customers of Defendant, many of whom reside in Maryland, whose personal identifying information (“PII”) was allegedly accessed, as the result of a cyberattack, by an unauthorized third party to certain computer systems of Defendant. Plaintiffs sought to vindicate the rights of consumers who are not otherwise positioned to pursue their legal rights on their own. This is the same mission as Maryland Legal Aid, which is a nonprofit organization based in Baltimore, Maryland, that “provides a full range of free civil legal services to financial eligible individuals [with the goal] to protect peoples’ basic needs and human rights.” <https://www.mdlab.org/> (last visited Sept. 11, 2024). All the services provided by Maryland Legal Aid are free, and they offer expertise in consumer, health, individuals rights, employment, housing, family, income maintenance, and unemployment compensation. <https://www.mdlab.org/get-help-services/> (last visited Sept. 11, 2024). Thus, supporting Maryland Legal Aid as a *cy pres* recipient would be aligned with the parties’ original goals and be for the “indirect prospective benefit of the class.” Plaintiffs’ request should therefore be granted.

The parties conferred about the selection of the *cy pres* recipient, with the parties agreeing, through counsel, that Maryland Legal Aid was an acceptable choice.

For these reasons, the parties respectfully request that the Court approve the distribution of \$79,465.48 in unclaimed funds stemming from the Class Settlement to Maryland Legal Aid as a *cy pres* recipient.

Dated: September 19, 2024

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CERTIFICATE OF SERVICE

I, Raina C. Borrelli, hereby certify that on September 19, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, below, via the ECF system.

DATED this 19th day of September, 2024.

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